

§ 202.9 Decisions by the Secretary of Transportation.

Decisions of the Secretary will be reached in accordance with applicable law and the evidence. Upon the determination of a case taken under review by the Secretary, a written decision and opinion which states the Secretary's conclusions and an explanation thereof will be issued.

§ 202.10 Petitions for reconsideration.

Petitions for reconsideration of decisions by the Secretary in any case taken under review will be considered, upon a showing of good cause, if filed within ten (10) days of service of the Secretary's decision.

§ 202.11 Ex parte communications.

Oral or written communications with the Department concerning a matter subject to Secretarial review under section 6.01 of Department Order 117-A, unless otherwise provided by law or by order, rule, or regulation of the Department, shall be deemed ex parte communications and shall not be part of the record and shall not be considered in making any recommendation, decision or action; *Provided, however,* That this rule shall not apply to customary informal communications with Department counsel, including discussions directed toward the development of a stipulation or settlement between parties; communications of a nature deemed proper in proceedings in U.S. Federal courts; and communications with Department counsel which merely inquire as to procedures or the status of a proceeding without discussing issues or expressing points of view. Any written communication subject to the above stated rule received by the Department shall be placed in the correspondence file of the case, which is available for public inspection. If an oral communication subject to the above stated rule is received, a memorandum setting forth the substance of the conversation shall be made and placed in the correspondence file.

PART 203—PROCEDURES RELATING TO CONDUCT OF CERTAIN HEARINGS UNDER THE MERCHANT MARINE ACT, 1936, AS AMENDED**Sec.**

203.1 Scope of rules.

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203.6 Oral evidentiary hearing before one or more members.

AUTHORITY: Secs. 204(b), 605(c) and 805(a), Merchant Marine Act, 1936, as amended (46 U.S.C. app. 1114(b), 1175(c) and 1223(a)).

SOURCE: 55 FR 12358, Apr. 3, 1990, unless otherwise noted.

§ 203.1 Scope of rules.

(a) The provisions of this part apply to applications which involve statutorily mandated hearings under sections 605(c) and 805(a) of the Merchant Marine Act, 1936, as amended (46 U.S.C. app. 1175(c), 1223(a)), hereinafter referred to as the "Act", conducted by the Maritime Administrator or Maritime Subsidy Board of the Maritime Administration, hereinafter referred to collectively as the "Administration".

(b) The provisions of this part are to be construed consistently with the Administration Rules of Practice and Procedure in 46 CFR part 201. If this part and 46 CFR part 201 conflict, this part shall govern.

§ 203.2 Applications.

(a) Notice of all applications subject to this part shall be published in the FEDERAL REGISTER, in accordance with the provisions of 46 CFR 201.72.

(b) All applications under section 605(c) of the Act shall specify, at a minimum, full details of the existing or proposed new or amended service, to include itineraries and the number and type of vessels currently operated in the trade or trade route, the number and type of vessels proposed to be operated in the trade or trade route, the frequency of sailings and port calls and the nature and extent of U.S.-flag and any foreign-flag competition. As a

matter of discretion, the Administration may request additional information, which may be protected by a confidentiality ruling, if justified. If the application is one for additional service on a route in which the applicant has an established service, or for an existing service, then the applicant must include information on its previous three years of operation. Applicants for permission under section 805(a) of the Act must describe clearly the scope of permission sought, including details of proposed domestic service and existing or proposed foreign service, as well as the applicant's operating structure.

(c) Applications under section 605(c) of the Act shall be filed on Form MA-964, in accordance with the instructions annexed thereto. Copies of Form MA-964 may be obtained on request from the Secretary of the Administration.

(d) Applications for permission under section 805(a) of the Act shall be submitted in accordance with the procedures set forth in 46 CFR part 380, and shall comply with all of the requirements of that part.

§ 203.3 Opposition to applications.

(a) *Required documents.* A person seeking to oppose an application shall file with the Secretary of the Administration, and concurrently serve upon the applicant, a petition for leave to intervene, together with an answer, within the time period specified in the FEDERAL REGISTER notice of the application. Normally, twenty days will be provided.

(b) *Petition for leave to intervene.* The petition for leave to intervene shall specify the basis upon which such person asserts a right to intervene and shall set forth with particularity:

(1) The number and type of U.S.-flag vessels currently operated by the person seeking intervention in the trade or trade route to which the application pertains.

(2) The frequency of sailings of vessels operated by such person in the trade or trade route to which the application pertains in the 36 calendar months immediately preceding the date of the application.

(3) The specific ports of call conducted by such person in the trade or

trade route to which the application pertains in the 36 calendar months immediately preceding the date of the application.

(4) The average annual carriage by such person for the past 36 months on the trade route to which the application pertains.

(5) If applicable, specific information detailing firm and definite plans for the inauguration of a new service, including, as appropriate, but not limited to, approval by the board of directors or general partners, membership in applicable conference agreements, office openings or the retention of agents in the proposed service area, acquisition of vessels and related equipment, subsidy applications, applications for any needed Government approvals or advertisement for the proposed service.

(6) Such other information as the person believes should be considered in a determination of such person's right to intervene.

(c) *Answer.* (1) The answer shall be simultaneously filed with the petition for leave to intervene and shall specify the basis upon which such person asserts the application should be denied or granted subject to modifications.

(2) The answer shall set forth with particularity:

(i) The ground upon which opposition is based;

(ii) The factual matters which such person believes must be determined by the Administration;

(iii) The legal matters which such person believes must be determined by the Administration;

(iv) For each factual and legal matter raised such person's position and basis therefor; and

(v) The precise nexus between each factual and legal matter raised and the decision of the Administration.

(d) *Right to intervene in Opposition to applications.* (1) Leave to intervene in opposition to applications under section 605(c) of the Act will only be granted to operators of U.S.-flag vessels, and only to the extent, as demonstrated by the petition for leave to intervene, that such person provides an existing service, or that such person has firm and definite plans to provide a service, by a showing that its vessels operate in the same trade or on the